

FILED

IN THE UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
LAS CRUCES, NEW MEXICO

FOR THE DISTRICT OF NEW MEXICO

FEB 13 2006 *dj*

MATTHEW J. DYKMAN
CLERK

RENEE R. DEAGUERO,

Plaintiff,

v.

CIV 05-1173 MCA/KBM

ROBIN LYDICK, JEFFREY LYDICK,
and CITY OF RIO RANCHO,

Defendants.

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

This matter is before the Court on a letter from counsel for Plaintiff attached hereto as Exhibit A. The letter states that Plaintiff has married Defendant Rob Lydick and she no longer wishes to pursue claims against him or his son, Jeffrey Lydick. Indeed, Plaintiff has filed a "Notice of Partial Dismissal" as to those two defendants. *See Doc. 3.*

Counsel for Plaintiff further acknowledges that as to Plaintiff's sole federal claim brought pursuant to 42 U.S.C. § 1983, *respondeat superior* liability is unavailable against Defendant City of Rio Rancho, and requests that the Court *sua sponte* remand this action to state court for consideration of the remaining state claim.

Wherefore,

IT IS HEREBY RECOMMENDED AS FOLLOWS:

- (1) All claims against Defendants Robin and Jeffrey Lydick be dismissed with prejudice;
- (2) The Section 1983 claim against the City of Rio Rancho be dismissed with prejudice

for failure to state a claim; and

(3) This action be remanded to Thirteenth Judicial Court, County of Sandoval, State of New Mexico (Cause No. D-139-CV-05-1145).

THE PARTIES ARE FURTHER NOTIFIED THAT WITHIN 10 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636 (b)(1). **A party must file any objections with the Clerk of the District Court within the ten day period if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.**


UNITED STATES MAGISTRATE JUDGE

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February 9, 2006

By Facsimile: 505-528-1485

Honorable Karen Ballard Molzen
United States Magistrate Judge
200 East Griggs
Las Cruces, New Mexico 88001



Re: DEAGUERO, RENEE vs.
City of Rio Rancho

Dear Madam:

After speaking with you on the telephone, I called our client, Rence DeAguiro, and was informed she is married to Rob Lydick and does not intend to pursue claims against Rob Lydick or his son, Jeffrey Lydick; she does, however, intend to prosecute her claims against the City of Rio Rancho for seizure of her vehicle. We will file a Rule 41(a) notice of dismissal with regard to Rob Lydick and Jeffrey Lydick.

We agree with your statement that 28 U.S.C. §1983 does not provide for respondeat superior liability of a municipality for random unauthorized acts of employees of the municipality. This case is not brought under 42 U.S.C. §1983 but under New Mexico state law which has no such limitation. We regret we failed to move for remand, under provisions of 28 U.S.C. §1447, timely, however, we believe the court may, in its own motion, remand it under provisions of 28 U.S.C. §1447(c), as there is no allegation in the complaint to support federal jurisdiction.

EXH. A

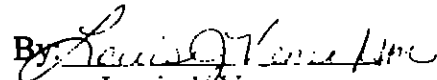
February 9, 2006

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With respect to the fax that was sent to me from your office regarding this claim, I am unable to find any evidence of it; it may have been received and misrouted, but I certainly was unaware of it.

Yours very truly,

Venlaw@NM, L.L.C.

By 
Louis J. Vener

LJV/jm

cc: Ms. Renee DeAguero
4257 Foxwood Trail, Southeast
Rio Rancho, New Mexico 87124

French & Associates, P.C.
500 Marquette Avenue, Northwest, Suite 500
Albuquerque, New Mexico 87102
Attention: Ronald Gould, Esquire

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